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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. 541

JOHN CARRIER and J. HARVEY CARPENTER, Guardian of John Carrier, Incompetent Veteran,
Petitioners,

vs.

CURLEY BRYANT, *Respondent*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

Certiorari Granted January 30, 1939

PETITIONERS' BRIEF

JOHN W. WOOD,
Attorney for Petitioners.

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IN THE

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No. 541

JOHN CARRIER and J. HARVEY CARPENTER, Guardian of John Carrier, Incompetent Veteran,
Petitioners,

vs.

CURLEY BRYANT, *Respondent*

BRIEF OF PETITIONERS

STATEMENT OF THE CASE

Petitioners herein seek reversal of the decision of the Supreme Court of North Carolina in its Cause No. 172, Fall Term, 1938, styled Curley Bryant v. John Carrier and J. Harvey Carpenter, Guardian of John Carrier, 214 N. C. 174, 198 S. E. 651, wherein that Court held that the respondent herein, notwithstanding the provisions of Section 454(a), Title 38, U. S. C., could satisfy his judgment claim against the incompetent veteran out of the bonds and negotiable notes purchased for the benefit of the incompetent by his guardian out of funds derived

wholly from payments of disability compensation and War Risk Term Insurance by the United States.

The incompetent veteran owns United States Government bonds in the principal amount of $8,350, and negotiable notes of the face value of $3,997 (R. 4, 5). These are listed by the incompetent's guardian, the petitioner J. Harvey Carpenter, as "Investments" (R. 4) and were found by the Trial Court to be "Investments" (R. 6). The Trial Court further found and it is undisputed, that these investments were made for the incompetent veteran by his guardian "from the proceeds of moneys paid to him by the United States Government on account of his disability incurred and insurance in the World War" (R. 6).

At the June-July, 1938, Term of the Superior Court of Rutherford County, North Carolina, respondent obtained a judgment against petitioner John Carrier, an incompetent World War veteran, in the amount of $1,500 (R. 1, 3), which judgment was affirmed by the Supreme Court of North Carolina, 214 N. C. 191, 198 S. E. 619.

While that appeal was pending respondent issued execution on his judgment against the incompetent veteran (R. 1, 3), and petitioners obtained a temporary restraining order enjoining the respondent from proceeding by way of execution on the judgment on the ground that all of said veteran's estate, consisting of the above mentioned bonds and notes being investments made of moneys paid for the benefit of said veteran by the United States as compensation and disability insurance (War Risk Term Insurance), is exempt from execution on a creditor's claim by virtue of the provisions of Sections 454 and 454(a), Title 38, U. S. C., (R. 1-4). Said temporary restraining order was dissolved by the said Superior Court on the ground that such moneys having been invested, had lost their character as exempt property and said Court held that such investments were subject to execution (R. 5-7). Upon appeal the Supreme Court of the State on September 28, 1938, affirmed this decision of the Superior Court, 214 N. C. 174, 198 S. E. 651.

and although conceding the power of Congress to exempt, held that such exemption extends only to the money as such, and not the investments therefrom, citing *Lawrence* v. *Shaw*, 300 U. S. 245, 81 L. Ed. 623, 57 S. Ct. 443, in support thereof (R. 9-16). Petitioners herein, contending that the Supreme Court of North Carolina erred in applying the rule as to exemption from taxation to exemption to claims of a creditor, petitioned this Court for certiorari on December 23, 1938, under the provisions of Title 28, U. S. C., Section 344, paragraph (b), Section 237, Judicial Code, as amended, and the petition was granted on January 30, 1939 (R. 17).

ASSIGNMENTS OF ERROR

It is respectfully submitted that the Supreme Court of North Carolina erred in holding that:

1. The judgment of the Superior Court dissolving the injunction and refusing to make same permanent should be affirmed.

2. In holding that the assets of the veteran are subject to execution.

3. In holding that moneys paid a veteran, by way of disability compensation and insurance benefits, when invested are not subject to the exemptive provisions of Section 454(a) respecting claims of creditors and attachment.

STATUTES RELIED UPON BY PETITIONERS

Section 454(a), Title 38, U. S. C., Section 3, Public No. 262, 74th Congress, which repealed Section 454 (Sec. 22, World War Veterans' Act) and Section 54, Title 38, U. S. C., (R. S. 4747); and Section 5, Public No. 262, are quoted in full:

Section 454(a), Section 3, Public No. 262, 74th Congress.

"Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, *either before or after receipt by the beneficiary.* Such provisions shall not attach to claims of the United States arising under such laws *nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments.* Section 4747 of the Revised Statutes and Section 22 of the World War Veterans' Act, 1924, are hereby repealed, and all other Acts inconsistent herewith are hereby modified accordingly. The provisions of this section shall not be construed to prohibit the assignment by any person, to whom converted insurance shall be payable under Title III of the World War Veterans' Act, 1924, of his interest in such insurance to any other member of the permitted class of beneficiaries." (Emphasis supplied.)

Section 5, Public No. 262, 74th Congress.

"That this Act shall take effect and be in force from and after its passage, but the provisions hereof shall apply to payments made heretofore under any of the Acts mentioned herein."

QUESTION PRESENTED

WHETHER THE PROVISIONS OF SECTION 454(a), TITLE 38, U. S. C., AND SECTION 5, PUBLIC NO. 262, 74TH CONGRESS, PREVENT SATISFACTION OF A JUDGMENT BY WAY OF EXECUTION ON THE PERSONAL ESTATE OF THE INCOMPETENT VETERAN, IN THE HANDS OF HIS GUARDIAN, DERIVED WHOLLY FROM PAYMENTS UNDER THE WORLD WAR VETERANS' ACT AND COGNATE VETERAN LEGISLATION.

ARGUMENT

Epitome

Upon each of the above assignments of error the following argument is respectfully submitted:

I. The judicial and legislative history of Section 454(a) clearly shows that it was the manifest intent and purpose of Congress that the exemptive provisions thereof relating to claims of creditors comprehended not only the benefits paid but also the proceeds of such benefits invested in usual form.

II. Under well settled principles of statutory construction Section 454(a) must be construed to exempt from the claims of creditors not only the benefits paid but also the proceeds thereof invested in the usual form.

III. Section 454(a), being within the constitutional power of the Congress, is controlling, and should be liberally construed to accomplish the purpose thereof.

IV. The construction given to the language of Section 454(a) by the Supreme Court of North Carolina deprives an insane veteran of the protection which this Court has held is afforded to a competent veteran.

POINT I

The Judicial and Legislative History of Section 454(a) Clearly Shows That It Was the Manifest Intent and Purpose of Congress That the Exemptive Provisions Thereof Relating to Claims of Creditors Comprehended Not Only the Benefits Paid but Also the Proceeds of Such Benefits Invested in Usual Form.

Section 454(a), (Section 3, Public No. 262, 74th Congress, entitled "An Act to safeguard the estates of veterans de-

rived from payments of pension, compensation * * * and insurance, and for other purposes") repealed R. S. 4747 (Section 54, Title 38, U. S. C.), and Section 454 (Section 22, World War Veterans' Act, 1924) and modified all other Acts inconsistent with its provisions.

R. S. 4747 read as follows:

> "54. *Attachment, levy, or seizure of moneys due pensioners prohibited.* No sum of money due, or to become due, to any pensioner, shall be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, whether the same remains with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner."

Section 22 read:

> "454. *Assignability and exempt status of compensation, insurance, and maintenance and support allowances.* The compensation, insurance, and maintenance and support allowance payable under Parts II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV; and shall be exempt from all taxation. Such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Parts II, III, IV, and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable.
>
> "The provisions of this section shall not be construed to prohibit the assignment by any person to whom converted insurance shall be payable under Part III of this chapter of his interest in such insurance to any other member of the permitted class of beneficiaries."

The former statute, R. S. 4747, Act of March 3, 1873, was construed by this Court, in *McIntosh* v. *Aubrey*, 185 U. S. 122, 46 L. Ed. 834, 22 S. Ct. 561, to the effect that the

words "Money due or to become due" applied to pension moneys in the pension office or the hands of its agents, and that the exemption from execution did not extend to property purchased out of pension funds.

Section 454, quoted above, (Section 22, World War Veterans' Act), was originally Section 28 of the War Risk Insurance Act as amended by the Act of June 25, 1918. (Section 402 of the Act of October 6, 1917, containing similar language referred only to insurance payments.) The language of this section differed from that of R. S. 4747 in that it did not use the words "due or to become due", but instead "the * * * compensation and insurance payable * * * shall not be subject to the claims of creditors of any person to whom an award is made * * *".

The Supreme Courts of several States construed this language broadly to apply not only to the funds after their receipt by the beneficiary but to property purchased in part or wholly out of such funds—following *Payne* v. *Jordan*, 36 Ga. App. 787, 138 S. E. 262. See case same title 152 Ga. 367, 110 S. E. 4 and 452. *Wilson* v. *Sawyer*, 177 Ark. 492, 6 S. W. (2d) 825. *In re Murphy*, 237 N. Y. S. 448.

The departure from this liberal construction arose over the question of exemption from taxation. While the Supreme Court of Georgia in the case of *Rucker* v. *Merck*, 172 Ga. 793, 159 S. E. 501, held the exemption of Section 22 extended also to taxation of property purchased with benefits received, other State Supreme Courts declined to follow. The Supreme Court of Kansas held, in *State* v. *Shawnee County Commissioners*, 132 Kan. 233, 294 Pac. 915, that the word "payable" as used in Section 22 meant the same as "Due or to become due" used in R. S. 4747, and hence that the exemption as to taxation did not extend to property purchased out of the benefits received. This Court denied certiorari in that case, 283 U. S. 855, 75 L. Ed. 1462, 51 S. Ct. 648; but the same question was considered in the case of *Trotter* v. *Tennessee*, 290 U. S. 354, 78 L. Ed. 358, 54 S. Ct. 138. In that case the Supplemental Brief of the Peti-

tioner showed that the legislative history of Section 22 clearly demonstrated that the word "payable" as used therein was synonymous with "paid". This Court did not base its decision on the construction of said word as did the Supreme Court of Kansas in the case of *State* v. *Shawnee County Commissioners*, supra, but instead held that

> "*Exemptions from taxation are not to be enlarged by implication if doubts are nicely balanced.* Chicago Theological Seminary v. Illinois, 188 U. S. 662, 674, 47 L. Ed. 641, 649, 23 S. Ct. 386. On the other hand, they are not to be read so grudgingly as to thwart the purpose of the lawmakers. The moneys payable to this soldier were unquestionably exempt till they came into his hands or the hands of his guardian. McIntosh v. Aubrey, 185 U. S. 122, 46 L. Ed. 834, 22 S. Ct. 561. We leave the question open whether the exemption remained in force while they continued in those hands or on deposit in a bank. Cf. McIntosh v. Aubrey, supra; State ex rel. Smith v. Shawnee County, 132 Kan. 233, 294 Pac. 915; Wilson v. Sawyer, 177 Ark. 492, 6 S. W. (2d) 825; and Surace v. Danna, 248 N. Y. 18, 24, 25, 161 N. E. 315. Be that as it may, we think it very clear that there was an end to the exemption when they lost the quality of moneys and were converted into land and buildings. The statute speaks of 'Compensation, insurance, and maintenance and support allowance payable' to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises. Veterans who choose to trade in land or in merchandise, in bonds or in shares of stock, *must pay their tribute to the state.* If immunity is to be theirs, the statute conceding it must speak in clearer terms than the one before us here." (Emphasis supplied.)

It will be observed that although this decision was rendered prior to the enactment of the amendatory and clarifying statute involved in the instant case, the question was

then left open whether the exemption extended to moneys derived from such payments.

It also is apparent that this decision was based upon the conflict between the none too clear language of the statute then before the Court and the taxing power of a sovereign state. In refusing to apply the exemption and suspend the power of taxation by the State this Court followed the rule of statutory construction expressed in the case of *Chicago Theological Seminary* v. *Illinois*, 188 U. S. 662, 672, 47 L. Ed. 641, 23 S. Ct. 386, in which it was said:

> "The rule is that, in claims for exemption from taxation under legislative authority, the exemption must be plainly and unmistakably granted; it cannot exist by implication only; a doubt is fatal to the claim."

To like effect is the opinion of this Court in the case of *Bank of Commerce* v. *Tennessee*, 161 U. S. 134, 146, 40 L. Ed. 645, 16 S. Ct. 456, where it is said:

> "Taxes being the sole means by which sovereignties can maintain their existence, any claim on the part of any one to be exempt from the full payment of his share of taxes on any portion of his property must on that account be clearly defined and founded upon plain language. There must be no doubt or ambiguity in the language used upon which the claim to the exemption is founded. It has been said that a well founded doubt is fatal to the claim; no implication will be indulged in for the purpose of construing the language used as giving the claim for exemption, where such claim is not founded upon the plain and clearly expressed intention of the taxing power."

The import of the decision in *Trotter* v. *Tennessee*, supra, was strictly limited to the specific point therein presented, to wit: Exemption from taxation by a sovereign state upon the facts of that case. Indeed, the decision of the Court could not well have been otherwise, in view of the rules of construction recognized and so aptly stated in the cases

just cited. The instant case, however, is readily distinguishable because the exemption of lands from the taxing power of the state is quite a different matter from the exemption of an incompetent veteran's estate from the claims of his individual creditors.

This Court had occasion to consider the other phase of the prior exemption statute—that as to claims of creditors—in *Pagel* v. *Pagel*, 291 U. S. 473, 476, 78 L. Ed. 921, 54 S. Ct. 497, on a claim that such exemption, as to creditors of the deceased veteran, extended to insurance reverting to his estate (not due the veteran himself or his beneficiary) and held, "The purpose of the exemption, Sec. 454, is to safeguard to the insured soldier and the beneficiary payments made under the policy to them or for their benefit. • • • The language of the statute limits the exemption to 'any person to whom an award is made.' It is clear that the statute does not extend the exemption beyond the insured and beneficiary."

Thereafter, and on January 28, 1935, the Supreme Court of North Carolina, in *State, etc.*, v. *Bank*, 207 N. C. 697, 178 S. E. 487, applied the rule as to taxation announced by this Court in the case of *Trotter* v. *Tennessee*, supra, to the claims of the State as creditor—holding specifically that the property purchased out of the benefits received and invested was not exempt. This Court denied certiorari, 295 U. S. 761, 79 L. Ed. 1704, 55 S. Ct. 921.

It was to cure this uncertainty that the legislation which became Section 3 of the Act of August 12, 1935—Public No. 262, 74th Congress—was proposed. Said act was entitled: "To safeguard the estates of veterans derived from payments of pension, compensation, emergency officers' retirement pay and insurance, and for other purposes." Section 1 thereof amended Section 450, Title 38, U. S. C., as to guardianship matters. Section 2 repealed the embezzlement statutes and enacted a more stringent section as to embezzlement by guardians and other fiduciaries. Section 3 repealed R. S. 4747 and Section 454, Title 38, U. S. C., and

re-enacted in language intended to be clearer certain provisions thereof, and it is this section which is involved in the instant case. Section 4 contained a separability clause. Section 5 provided that the provisions of the Act should be prospectively effective as to payments made prior to its enactment.

This Act, Public No. 262, 74th Congress, Title 38, Section 454(a), U. S. C., was enacted as the result of an investigation made by a subcommittee of the Committee on World War Veterans' Legislation of the House of Representatives under H. R. 409, 73rd Congress, and as shown on page 71 of the Report of said subcommittee, submitted January 8, 1935, the Administrator of Veterans' Affairs recommended to it, page 74, that the section of the statute which is involved in the instant case be amended to read as follows:

> "SECTION TO REPLACE SECTION 22 WORLD WAR VETERANS' ACT, SECTION 454, TITLE 38, U. S. C., AND SECTION 4747 REVISED STATUTES
>
> "Section —. Payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, *either before or after receipt by the fiduciary, so long as they remain unexpended for his benefit. Such provisions shall not attach to any property purchased in part or wholly out of such payments,* nor to claims of the United States arising under such laws. Sections 4747 Revised Statutes, 308 World War Adjusted Compensation Act, and 22 World War Veterans' Act are repealed, and all other acts inconsistent herewith are modified hereby." (Emphasis supplied.)

Thus it was proposed that "Payments made to, or on account of a beneficiary * * * shall be exempt * * * either before or after receipt * * * so long as they remain unexpended for his benefit" and that "Such provisions shall not attach to any property purchased in part or

wholly out of such payments." Neither Section 22 of the World War Veterans' Act (Section 454, Title 38, U. S. C.) nor Section 4747 of the Revised Statutes which this section was intended to replace contained any provision that the payments should be exempt after receipt and until they were expended or that the exemption should cease when property was purchased therewith. All doubt which might have previously existed as to whether the exemption continued after the receipt of the payments was to be dispelled. It was proposed that the exemption should continue until the payments were expended for the veteran's benefit, and should definitely cease at the time that the payments were used to purchase property. As between the separate subjects of taxation and creditor's claims, no distinction was to be drawn in the termination of the exemption. But, as will be shown, the Congress declined to approve the proposal that no distinction be made.

Hearings were held by the above mentioned subcommittee and portions of a statement made by Mr. Edward E. Odom, Assistant Solicitor of the United States Veterans' Administration, at the hearing held on December 13, 1934, as shown on page 262, Part 3, Hearings, H. R. 409, 73rd Congress, are quoted below and a more complete statement of the hearing held on said date appears on pages 33 to 36 of the Appendix hereof.

> "Mr. Odom. The suggestion that the Administrator made, I believe, read this way:
>
> 'This provision shall not attach to any property purchased wholly or in part out of such payments, nor to claims of the United States arising under such laws.'
>
> "The first clause of that suggested sentence was intended to bring this section into line with the decision of the Supreme Court of the United States in the case of Trotter v. Tennessee; and, as applied to taxation, probably is correct if the intention of the Congress is

that property purchased out of the insurance and compensation payments should not be exempt from taxation. The Supreme Court has held that under the present law it is not exempt; but there is a serious question whether—for example, if a veteran, as I think was suggested by Justice Cardozo, takes his compensation and buys a barrel of flour with it or a side of meat, that that should not be exempt, the same as the money itself; or, if he invests it in bonds, that the bonds should or should not, as might be decided by the Congress, be exempt from the claims of his creditors.

"It was our understanding that this would not affect the present holding that these funds, no matter in what form they are invested, would be exempt from the claims of creditors. But there is a case pending in the Supreme Court of the State of North Carolina, and another one in the Kentucky Supreme Court, where the decision of the Supreme Court of the United States in the case of Trotter v. Tennessee is being argued as applicable to the claims of creditors; that is, that if the veteran puts his money in property, that it is no longer exempt from the claim of the creditor.

"If that is the proper effect of this language, it occurs to us that the committee might desire to give some consideration to whether they would not change that so as to make it clear that it is only on the question of taxation that the property shall not be exempt.

"In other words, it could be argued, I suppose well, that the veteran's property should be taxed the same as anybody else's. *Now, whether his property should also be free from the claims of creditors when that property is purchased with these funds, is the question that ought to be considered by the committee at this time, I think."* (Emphasis supplied.)

At the conclusion of all of the hearings, the subcommittee of the Committee on World War Veterans' Legislation recommended, page 79 of its Report submitted January 8, 1935, as follows:

"It is therefore proposed that the following section be enacted to replace section 22, World War Veterans'

Act, section 454, Title 38, United States Code, and section 4747, Revised Statutes:

"Sec. 3. Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, *either before or after receipt by the beneficiary.* Such provisions shall not attach to claims of the United States arising under such laws *nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments.* Sections 4747, Revised Statutes, and 22, World War Veterans' Act, are repealed, and all other Acts inconsistent herewith are modified accordingly. (Emphasis supplied.)

"The provisions of this section shall not be construed to prohibit the assignment by any person to whom converted insurance shall be payable under Title III of the World War Veterans' Act of his interest in such insurance to any other member of the permitted class of beneficiaries."

It is thus to be seen that the subcommittee realized that the exemption of the thing for which the veteran might expend the "Payment of benefits" was just as necessary as an exemption of the money itself and since it was desired to give a broader scope to the exemption than the Administrator had proposed the subcommittee struck out the qualifying words "so long as they shall remain unexpended for his benefit" and following the suggestion which had been advanced at the hearings, supra, rejected the general language which had been proposed by the Administrator as to the removal of the exemption as to property purchased with the payments and specifically confined the removal of that exemption solely to the taxation of such property.

This legislation as recommended by the said subcommittee was subsequently enacted without material change by both houses of Congress and the Committee of Finance of the Senate in its report (No. 1072, S. 74th Congress) ex-

plained the changes intended by Section 3, in part, as follows:

> "(11) The next change is section 3 of the bill which proposes a new section to replace section 22 of the World War Veterans' Act, 1924, and section 4747 of the Revised Statutes. The purpose of this new section is two-fold: first, to make uniform the law with respect to exemptions granted beneficiaries, and second to clarify the language with respect to such exemptions. * * *
>
> "The two sections have also been construed differently not only by the highest appellate courts of the States, but also by the Supreme Court of the United States. For example, it has been held that 'payments due or to become due' of section 4747 Revised Statutes refer to the payments before they are made, and that the exemptions of said section do not extend to payments made to a beneficiary or to the guardian of a beneficiary. (See McIntosh v. Aubrey (185 U. S. 122, 46 L. Ed. 834).) Some State supreme courts have held that the language of section 22 should be construed similarly. (See State ex rel. Smith v. Bd. of Com. of Shawnee Co. (132 Kan. 233, 294 Pac. 915)), and although the Supreme Court of the United States denied certiorari in the case just cited it has not passed directly upon that specific question, *but has indicated that it would not follow this doctrine with respect to any exemption other than that relating to taxation.* (*See Trotter* v. *Tenn.* (*78 L. Ed. 128*) *and Pagel* v. *Pagel* (*78 L. Ed. 627*).) The language of the proposed amendatory section will, it is believed, clarify these disputed points and will place the law in conformity with the decisions of the Supreme Court on the subject. It will make the law uniform as to all beneficiaries." (Emphasis supplied.)

It is apparent from an examination of the proposed legislation as submitted by the Administrator of Veterans' Affairs, the Hearings and Reports of the Committees of Congress, and the statute as finally recommended by these committees and enacted by Congress, that the change which

was effected in the language of the proposed legislation concerning "any property purchased in part or wholly out of such payments" was considerately and purposefully made. It is also apparent that it was the intent and purpose of Congress in enacting this statute to distinguish between the right of a sovereign, on the one hand, and the claim of a creditor, on the other, and to reject the recommendation of the Administrator of Veterans' Affairs which would have subjected such property to the claims of creditors as well as for taxes, and instead to safeguard the estates of veterans derived from benefit payments, even though invested, from all claims other than those of a sovereign.

The right of a sovereign to levy and collect taxes for the public good has always been regarded as superior to that of a creditor to collect his claim, and Congress, in refusing to enact the portion of the proposed legislation which removed the exemptive provisions as "to any property purchased in part or wholly out of such payments" as far as creditors were concerned, recognized the higher obligation which it and other legislative bodies place upon a citizen to pay his tribute to a sovereign than upon him to pay his debt to a creditor and enacted such a statute as it believed was sufficient to exempt such property from the claim of a creditor and yet leave the sovereign free to collect its just due.

The Supreme Court of North Carolina had held, in *Martin* v. *County*, 201 N. C. 43, 158 S. E. 847, decided prior to the case of *Trotter* v. *Tennessee*, supra, and prior to the passage of the statute involved in this case, that property purchased out of benefit payments was not exempt from taxation because the word "payable" as used in Section 22—following the theory of the Supreme Court of Kansas in the case of *State* v. *Shawnee County Commissioners*, supra—protected the payments only before they were paid; subsequent to the enactment of Section 3, supra, it held, in *Lawrence* v. *Shaw*, 210 N. C. 352, 186 S. E. 504, that the payments when deposited in a bank by the veteran's guardian are not exempt from taxation. This Court reversed the latter case, *Law-*

rence v. *Shaw*, 300 U. S. 245, 81 L. Ed. 623, 57 S. Ct. 443, and after referring to the *Trotter case*, said:

> "Having no doubt that the moneys payable by the Government to the veteran were exempt until they came into his hands or those of his guardian, we left the question open 'Whether the exemption remained in force while they continued in those hands or on deposit in a bank.' The World War Veterans' Act, 1924, provided that the compensation and insurance allowances should be 'exempt from all taxation.' The Act of 1935 is more specific, providing that the payments shall be exempt from taxation and shall not be liable to process 'either before or after receipt by the beneficiary.' There was added the qualification that the exemption should not extend 'to any property purchased in part or wholly out of such payments.' This more detailed provision was substituted for that of the earlier Act and was expressly made applicable to payments theretofore made. We think it clear that the provision of the later Act was intended to clarify the former rather than to change its import and it was with that purpose that it was made retroactive."

It is obvious that the exemption referred to as having been qualified was the exemption as to taxation for the reason that the statute made that clear and it was the only issue in the case. Since the exemption as to taxation in the 1935 Act appears in the same clause in which the exemption as to the claims of creditors is found, but the former is qualified, whereas the latter is not, it seems to be apparent that the Court noticed this distinction in its reference to the fact that this Act was more specific. It is submitted, therefore, that the Supreme Court of North Carolina by failing to distinguish in its decision in the instant case between the right of a sovereign and the claim of a creditor, misapplied the decision of this Court in the case of *Lawrence* v. *Shaw*, supra, and erroneously construed the provisions of the statute.

POINT II

Under Well Settled Principles of Statutory Construction Section 454(a) Must Be Construed to Exempt From the Claims of Creditors Not Only the Benefits Paid but Also the Proceeds Thereof Invested in the Usual Form.

The cardinal rules of statutory construction, uniformly recognized, aid in arriving at the proper meaning of the statute. Among these are that the legislative intent must prevail, that the statute is to be read as a whole, that every part is to be given effect, that particular words out of harmony with the general purposes of the act may be given effect if by way of proviso or exception, and that the express mention of one thing implies the exclusion of another of the same class.

The application of these rules to Section 454(a), Title 38, U. S. C. (Section 3, Public No. 262, 74th Congress) results in a proper construction of the section which is in accord with its judicial and legislative history as above outlined. There is no conflict between the history of the legislation and the construction which, petitioners submit, may be found in the plain words of the statute. It has been pointed out that the Act of which this section is a part is entitled "An Act to safeguard the estates of veterans derived from payments of pension, compensation, emergency officers' retirement pay and insurance, and for other purposes." The language of the section is specific: First, it provides that benefits may not be assigned before payment, second, that payments, either before or after receipt by the beneficiary, shall be exempt from taxation, claims of creditors, and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever. Then follow two exceptions, first, certain claims of the United States, and, second, that the exemption *as to taxation* shall not extend *to property purchased* in whole or in part *out of such payments.*

Such specific language removes all doubt as to the meaning of the word "payable," and makes it clear that the exemptions apply *after* as well as *before* receipt by the beneficiary. "Beneficiary" is one, veteran or otherwise, in receipt of benefits. *Culp* v. *Webster*, 70 Pac. (2d) 273. This is in line with this Court's decision in the case of *Pagel* v. *Pagel*, supra.

Effectuating a liberal purpose, as declared in the title thereof, the exemption provisions of the statute remain unrestricted by legislative fiat except in the matter of claims of the United States and taxation. The decision of the Supreme Court of North Carolina can be sustained, if at all, therefore, only by resort to an *implied*, certainly not an express, restriction of the exemption, a view which favors creditors whose interests did not constitute the subject matter of the legislation, a view, too, which burdens the statute with an implication against its declared purpose and denies relief to the only class for whose benefit the law was enacted. An implication of this kind might be resorted to, in a proper case, to effectuate a declared purpose, or, as petitioners may do here, to sustain an exemption, but it may never be utilized, as it has been here, to frustrate the will of the Congress. Even so, if anything is to be implied, which petitioners submit may be improper and is unnecessary in this case, all that may be garnered from the accepted rules of statutory construction sustains petitioners' contention and has little or no tendency to support the decision of the Court below.

Since the statute contained ample exemption provisions there was no need for Congress to further lengthen it by providing specifically that investments made of the "Payments of benefits" should be exempt from the claims of creditors, and applying the universally accepted maxim *"Expressio unius est exclusiō alterius"* as a means of discovering the legislative intent the only logical conclusion which can be reached is that since Congress specifically excepted the exemptive provisions as to taxation it thereby

intended that investments made of the benefits should be exempt as to all claims except those for taxes.

Further, as pointed out by this Court, in *Lawrence* v. *Shaw*, supra, the intent was to clarify the language to accord with court decisions. Before the approval of the Act here involved, the weight of authority was to the effect that the exemption from taxation did not extend to investments. This Court so held. As to exemption from the claims of creditors, however, the weight of authority was that the exemption applied and protected investments and property acquired with benefit payments. This Court never decided that question. The two exemptions stood, and stand, on a different basis. The one subject to strict construction—as every citizen is expected to pay his just part of Government expense; the other to be broadly construed for the protection intended. *Pagel* v. *Pagel*, supra, *Spicer* v. *Smith*, 288 U. S. 430, 77 L. Ed. 875, 53 S. Ct. 415.

It is also a fundamental principle of statutory construction that weight is to be given to the contemporaneous construction placed upon a statute by the officers of departments charged with the duty of executing it, especially where such construction has been made by the highest officers in the executive department, and, while not generally controlling, such construction should not be disregarded or overturned except for the most cogent reasons and unless clearly erroneous. *Brewster* v. *Gage*, 280 U. S. 327, 74 L. Ed. 457, 50 S. Ct. 115.

In the recently decided case of *Armstrong Paint & Varnish Works* v. *Nu-Enamel Corp.*, 83 L. Ed. (Adv.) 183, 190, this Court said:

> "This administrative interpretation, contemporary with the legislation, and the legislative history have weight 'when choice is nicely balanced.' "

In the case of *Kern River Co.* v. *United States*, 257 U. S. 147, 154, 66 L. Ed. 175, 42 S. Ct. 60, this Court said:

"Even if the meaning were not otherwise made plain, we should be slow to reject the construction thus put on the section by the head of the Department charged with administering it. *Logan* v. *Davis,* 233 U. S. 613, 627, 58 L. Ed. 1121, 1128, 34 Sup. Ct. Rep. 685."

In this connection attention is directed to the following quoted portions of Regulations numbered 5339 and 5340 promulgated on January 27, 1936, by the Administrator of Veterans' Affairs who is charged with the duty of administering all Federal laws concerning veterans and their estates.

"GUARDIANSHIP POLICY REGARDING APPLICATION OF SECTION (3, PUBLIC NO. 262, 74th CONGRESS), TO CLAIMS OF CREDITORS AND TAXATION OF FUNDS IN THE HANDS OF GUARDIANS, CURATORS, CONSERVATORS, ETC.

"*Claims of Creditors*

"5339. (Section 3, Public No. 262, 74th Congress, applies to payments made to or on account of a beneficiary under the laws relating to veterans and exempts such payments, either before or after receipt by the beneficiary, from the claims of creditors, and provides that same shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever. *The language of the section as a whole is such that it is believed such exemption extends also to property in which the proceeds of such payments are or may be invested.* * * *) (Emphasis supplied.)

"*Taxation of Funds in Hands of Fiduciary*

"5340. (Payments made to or on account of a beneficiary under any of the laws relating to veterans are exempt from taxation. *Property purchased wholly or in part out of such payments is not exempt from taxation.* * * *)" (Emphasis supplied.)

The distinction which was thus drawn between "claims of creditors" and "taxation" is manifest and these regulations clearly show the construction which has been placed upon the exemption provision of the statute here involved by the highest officer of the executive department of the Government to which veterans and their fiduciaries turn for advice.

It is therefore submitted that by the cardinal rules of statutory construction, as well as by its judicial and legislative history, the statute is shown to apply to payments invested for the benefit of the veteran.

POINT III

Section 454(a) Being Within the Constitutional Power of the Congress, Is Controlling, and Should Be Liberally Construed to Accomplish the Intent and Purpose Thereof.

It has been uniformly held that laws creating the right to pensions must be liberally construed with the view of promoting the objects of the lawmaking body.

In the case of *Walton* v. *Cotton*, 19 How. (U. S.) 355, 358, 15 L. Ed. 658, this Court said:

> "And where the language used may be construed as to carry out a benign policy, within the reasonable intent of Congress, it should be done."

The general rule in both State and Federal Courts is that exemptions—*other than as to taxation*—are to be construed liberally so as to effectuate their beneficient purposes. *Hills* v. *Joseph*, 229 Fed. 865. In the case just cited the Circuit Court of Appeals for the Ninth Circuit, at page 869, said:

> "The rule of construction applicable to exemption statutes is the most liberal known to the law. As said in 18 Cyc., at page 1380: 'By all but universal rule the statutes which create or give the right of exemption to a debtor are held subject to the rule of liberal con-

struction. Indeed, it would be more proper to say that they are generally subject to the most liberal construction which the courts can possibly give, the courts taking the ground that, since the statutes have a beneficial object, their first duty is to see that this object is accomplished.'"

This rule of liberal construction of exemption statutes is followed in North Carolina. *Goodwin* v. *Claytor*, 137 N. C. 224, 49 S. E. 173; *Shepherd* v. *Murill*, 90 N. C. 208. That exemptions as to creditors' claims are to be liberally construed as contrasted with the strict rule as to tax exemptions, was recognized by the Supreme Court of Kansas in *State* v. *Shawnee County Commissioners*, supra, and by the Supreme Court of California in *Estate of Ferarazza*, 28 Pac. (2d) 670. Such exemptions are based upon the public policy of protecting certain individuals, or certain things, for the greater good of the whole. This is particularly true as to pensions, or bounties, workmen's compensation, and insurance. Creditors have no vested interest in such benefits, even though the recipient should pay his just part of Government expense. Nor does the fact that the judgment is for an injury arising in tort affect the applicability of a general exemption. *Oakley* v. *Lasater*, 172 N. C. 96, 89 S. E. 1063. *Dellinger* v. *Tweed*, 66 N. C. 206.

These principles are discussed, in his apt manner, by the then Chief Justice Cardozo in rendering the decision of the Court of Appeals of New York in the case of *Surace* v. *Danna*, 248 N. Y. 18, 161 N. E. 315. That case involved the exemption provided in a Workmen's Compensation Law, and the decision held that the exemption extended to the moneys received under the Act and deposited in a bank. The decision cited with approval the case of *Bank* v. *Carpenter*, 119 N. Y. 550, 23 N. E. 1108, wherein the same Court held that the claim of a judgment creditor may not be satisfied by way of execution on property purchased by a veteran out of the proceeds of his United States pension, since the New York Statute exempted United States pensions from levy,

execution, or seizure. Said the Court (161 N. E. at page 317): "The end to be served, the mischief to be averted, supply the clews and the keys by which construction must be governed."

To like effect is the decision of the Supreme Court of Mississippi in the case of *De Baum* v. *Hulett Undertaking Co.*, 169 Miss. 488, 153 So. 513, involving a similarly worded statute, Section 618, Title 38, U. S. C.

That the Congress has the constitutional power to so protect the disabled veteran by safeguarding the proceeds of his compensation and insurance payments seems undisputed. As said in the last above cited case, *De Baum* v. *Hulett*, etc., the power is derived from Section 8, Article I of the Constitution, the war or defense powers; and as pointed out by this Court in the case of *United States* v. *Hall*, 98 U. S. 343, 25 L. Ed. 180, such power has been exercised ever since the First Congress to insure that the proceeds of the pension or bounty will inure solely to the benefit of the pensioner.

Subsequent decisions of this Court are not to the contrary, but the Supreme Court of North Carolina in the instant case cites as authority for such contrary view, the language of this Court in the case of *Lawrence* v. *Shaw*, supra, which reads as follows: "In order to carry out the intent of the statute, the avails of the Government warrants or checks must be deemed exempt until they are expended or invested." It is apparent, however, that this Court was then speaking of the tax exemption only, for that was the only question before it. It may appear, aside from the statute, that the same rule should apply as to exemption from claims of creditors if the moneys have been *expended*, although not if merely invested. But suppose they, being only enough for actual subsistence, were *expended* for food and clothing.

It was never intended by this legislation that the veteran and his family should starve or freeze so that creditors could exact their claims. The Congress, it is clear, has

established a public policy to protect the veteran in the enjoyment of his pension under such circumstances. The situation is no different as to the investment of such benefits. Again, aside from the provisions of the statute, a veteran is not obliged to retain his pension or insurance money in his pocket to prevent seizure. The Court said in *Lawrence* v. *Shaw*, supra: "Congress has declared that the payments of benefits by the Government shall be exempt not only before but 'after receipt by the beneficiary.' We cannot conceive that it was the intent of Congress that the veteran should lose the benefit of this immunity, which would attach to the moneys in his hands, by depositing the government warrants or checks in bank to be collected and credited in the usual manner. These payments are intended primarily for the maintenance and support of the veteran. To that end neither he nor his guardian is obliged to keep the moneys on his person or under his roof."

It is respectfully submitted that the rule for application in the instant case is the same as that which was announced in the well reasoned opinion of the Court of Appeals of New York in the case of *Bank* v. *Carpenter*, supra.

In that case a pensioner who had a wife and family purchased a house and lot for a home, paying a portion of the purchase price out of the proceeds of a pension and giving a mortgage on the premises to secure the balance. Section 1393 of the Code of Civil Procedure (now Civil Practice Act Par. 667) of the State of New York exempted from execution a "pension * * * heretofore or hereafter granted by the United States * * * for military services" and the Court, in holding that the premises which had been purchased by the pensioner were exempt from execution by his judgment creditor, said:

> "It is quite obvious that such an exemption can produce no beneficial effect, unless it is extended beyond the letter of the act, and given life and force, according to its evident spirit and meaning. Like other statutes, the section in question must be construed according to

the meaning and intent of the law-makers, and so as to effectuate their intention, so far as the language of the act will permit it to be done. Did the legislature intend to limit the force of their exemption to a pension, so long only as it remained an obligation of the government, or consisted of cash in the hands of the pensioner; or did they also intend to protect it after it had been expended in the purchase of articles of property designed to administer to the comfort and support of such pensioner and his family? If the latter was not intended, we must ascribe to the law-makers the absurd intention of granting pensions for the purpose of satisfying claims against pensioners, and not to provide for the care and comfort of invalid or aged soldiers. If the soldier is not protected in the act of exchanging his pension for the necessaries of life, its only effect would be to enable his creditors to take it in satisfaction of their claims. No benefit is conferred if the protection is not extended beyond the possession of the money itself, for its only value consists in its purchasing power, and if the soldier is deprived of that, the pension might as well, so far as he is concerned, have remained ungranted.

"The plain purpose of the act was to promote the comfort of the soldier; to secure to him the bounty of the government, free from the claims of creditors, and to insure him and his family a safe, although modest maintenance, so long as their needs required it. * * * *Where such moneys can be clearly identified and are used in the purchase of necessary articles, or are loaned or invested for purposes of increase or safety, in such form as to secure their available use for the benefit of the pensioner in time of need, we do not doubt but that they come within the meaning of the statute;* but where they have been embarked in trade, commerce, or speculation, and become mingled with other funds so as to be incapable of identification, or separation, we do not doubt but that the pensioner loses the benefit of the statutory exemption." (Emphasis supplied.)

Such an interpretation is the only fair and reasonable construction that can be made of the legislative provisions which are now before the Court. The only way by which the

interest of a veteran can be protected is to secure to him the use of the gratuity or pension granted him. That it has been the purpose of this Government from the earliest times down to the present to secure to the beneficiary of a pension such exclusive use and benefit cannot be doubted.

The Supreme Court of North Carolina in its decision in the instant case says that a liberal construction would "lead us into chaos." With respect to the imagined chaotic results, attention is again directed to the opinion of the Court of Appeals of New York in the case of *Bank* v. *Carpenter*, supra, decided almost half a century ago, in which that Court construed the terms of the New York statute concerning the exemption of Federal pensions, without any catastrophe ensuing. Furthermore, if carrying out the legislative intent would bring about such a result, the remedy lies with the Congress. However, nothing is shown to indicate that such would be the case. Perhaps more is to be feared in this respect if the State Courts do not give effect to the Federal laws.

In view of the foregoing it is submitted that the statute involved herein should be liberally construed to effectuate its beneficient purpose and under such construction it is clear that the investments which have been made are exempt from the claims of creditors.

POINT IV

The Construction Given to the Language of Section 454(a) By the Supreme Court of North Carolina Deprives an Insane Veteran of the Protection Which This Court Has Held Is Afforded to a Competent Veteran.

It is obvious from the decision in *Lawrence* v. *Shaw*, supra, that a competent veteran who deposits his "Payments of benefits" in a bank retains thereafter the exemption from creditors' claims; indeed, also, he retains the exemption from taxation. Without in any manner conceding

that such exemption is lost upon the withdrawal of the funds, petitioners submit that a competent veteran may keep his money in the bank indefinitely and not be harassed by creditors, expending it for necessities or other personal uses as he sees fit. But, as will be shown, an incompetent veteran will have no such protection if the decision of the Supreme Court of North Carolina is approved.

It is elementary that the primary duty of a guardian is to conserve the funds entrusted to his keeping. It is equally well settled that the guardian is charged with the duty of preserving the trust funds by investing on some acceptable security, such of them as will not be required for the immediate needs of his ward. In the case of *Gary* v. *Cannon*, 38 N. C. 64, 69, the Supreme Court of North Carolina said:

> "It is the duty of a guardian to keep the ward's money at interest and on good security; and that, under the penalty of being answerable for compound interest, if he will not reasonably endeavor to make it, and for the debt, if he allows it to remain on insufficient security."

In addition to this well settled principle the guardian in the instant case was required by the law of the State of North Carolina to invest the payments made by the Government for his ward's benefit, as is evidenced by the quoted portion of the Public Laws of North Carolina, Chapter 262, Session 1933 (Michie's Code of North Carolina, Chapter 40-a, Section 2202 (13)), which appears on page 37 of the Appendix hereof, and which Act amended the provisions of the Public Laws of North Carolina, Chapter 33, Session 1929. The statute of 1929, at the time of its passage by the Legislature, was entitled "An Act regulating the Guardianship of Incompetent Veterans and of minor children of disabled or deceased veterans and the Commitment of Veterans to the United States Government Hospitals."

The Amendment of 1933 made it mandatory that a guardian invest the funds of the estate in certain securities, among

which are bonds and notes of the same character involved in the present controversy.

The purpose of the investment in bonds and notes made in this case was not to enrich but to preserve the estate derived from the benefit payments for the use of the incompetent veteran. The expenses incident to the administration of guardianship estates, including such matters as court costs, fiduciary bond premiums, guardian's commissions and attorney's fees, would, in the course of time, substantially deplete the corpus of the estate unless it was temporarily invested in interest bearing securities. Undoubtedly it was in recognition of this fact that the State of North Carolina, as a matter of public policy, required the guardian to invest the funds.

A State cannot by such a statute deprive the incompetent veteran of the protection granted by the Federal law and render his benefit payments so invested subject to the claims of creditors. As to taxation, Congress has specifically so provided, but as to the claims of creditors, it is insisted that the intention of Congress was precisely the opposite.

The broad supervisory responsibility in guardianship matters prescribed by Section 1 of said Act (Sec. 450, Title 38, U. S. C., as amended) should not be so narrowly construed as to be confined only to moneys in the hands of a fiduciary. The language of this Court in the recent case of *Hines* v. *Lowrey*, 83 L. Ed. (Adv.) 62, seems a clear recognition of a broader intent and purpose. In fact, unless it was contemplated, there could have been no valid reason for the establishment of an elaborate system whereby, under Congressional mandate, the Veterans' Administration is charged with the direct responsibility of supervising the acts and conduct of guardians in the management of veteran's estates.

A great majority of the States, including North Carolina, have recognized this direct interest of the Federal Government in the administration of incompetent veteran's estates and have enacted supplementary legislation to further it.

All of this legislation, Federal and State, could have no purpose other than the protection of these estates so that they might be used for the benefit and to supply the needs of the incompetent veterans and their dependents.

There are none of the "fruits of business enterprises" referred to by this Court in the case of *Trotter* v. *Tennessee*, supra, to be found in the instant case. The veteran's guardian here merely did what the State of North Carolina required him to do. It is conceded that the identical funds paid by the Government for the veteran's benefit are held in the form of bonds and negotiable notes. The funds so invested have at all times remained subject to the orders of the Court having jurisdiction over him. No other moneys have been commingled with this fund.

The situation here presented is that of an incompetent veteran whose guardian in accordance with the laws of the State of North Carolina has invested the payments made for his benefit by the United States Government. Had the guardian done otherwise it could have well been contended that he was derelict in his duty and subject to removal. Surely, this is not a case of one choosing "to trade in land or in merchandise, in bonds or in shares of stock." The beneficiary of the Government did not choose, indeed, he could not choose, and his guardian did only that which he was expected and compelled to do with the payments of benefits.

In the case of *Spicer* v. *Smith*, supra, this Court said:

> "The provisions for exemption, non-assignability and suspension of payments plainly imply the passage of title from the United States to the veteran. The denunciation of embezzlement by guardians is not inconsistent with that intention. These regulations, like many to be found in pension laws, disclose a purpose to safeguard to beneficiaries the appropriations and payments made for their benefit (*United States* v. *Hall*, 98 U. S. 343, 353, 25 L. Ed. 180, 183; *Westfall* v. *United States*, 274 U. S. 256, 71 L. Ed. 1036, 47 S. Ct. 629) and

evince special solicitude for the protection of veterans who by reason of mental incompetency are unable to protect themselves.'' (Emphasis supplied.)

Congress intended that payments made for the benefit of a veteran should be received by him for the sole benefit of himself and his dependents and that he should have an opportunity to disburse them for that purpose, free from the claims of creditors. The funds which were paid by the Government in this case and which are now in the hands of the veteran's guardian in the form of temporary investments, have not been disbursed for the benefit of the veteran. The purpose and intent of Congress will not have been accomplished until they are.

Even though there may have been a change in the species of the funds paid for the veteran's benefit, the protection and immunity created by Congress goes to the substance, not the form—to the thing itself, that is the funds derived from the payments even though the payments have been invested for they still remain benefits for the veteran and are held by his guardian as such. Certainly, the intent and purpose of Congress must not be thwarted and the immunity and protection which Congress has given to the ''Payments of benefits'' to veterans must not be swept aside and the veteran and his estate penalized because the guardian was faithful to his trust and changed the form and not the substance of the benefits.

Summary

(A) The United States has by statute (Sec. 454(a), Title 38, U. S. C.) exempted the investments purchased by veterans with the benefits paid to them under the provisions of the World War Veterans' Act and cognate veteran legislation from the claims of their creditors.

(B) To give the narrow construction to the language of the said statute, as decided by the Supreme Court of North Carolina, would be contrary to the judicial and legislative

history of the said statute; would be contrary to the accepted rules of statutory construction, and would deprive veterans, and other beneficiaries, of the full immunity and protection intended by Congress.

(C) To construe the said statute as did the Supreme Court of North Carolina, is to forever debar the incompetent veteran from the use of his benefits, free from the claims of creditors, as a competent veteran may use his in accord with the decision of this court, in *Lawrence* v. *Shaw*, supra, for the very reason that the incompetent's guardian *must* invest it and by that act subject it to creditor's claims. Such a result could not possibly have been intended.

(D) In construing the said statute the Supreme Court of North Carolina misapplied the decision of this Court in *Lawrence* v. *Shaw*, supra, and deprived the incompetent veteran of a right, privilege or immunity guaranteed by said Federal law.

CONCLUSION

It is respectfully submitted that, for the reasons stated, and upon the authorities cited herein, the judgment of the Supreme Court of North Carolina should be reversed with costs.

JOHN W. WOOD,
Attorney for Petitioners.

APPENDIX

Hearings Before the Sub-Committee on Hospitalization and Guardianship of Incompetent Veterans, Committee on World War Veterans' Legislation of House of Representatives, by Authority of H. Res. 409, 73rd Congress, Part 3, Pages 261 to 264, December 13, 1934.

* * * * * * * * * *

The Chairman. We have added, or, at least, we are suggesting that this proviso be added:

> "Provided, That the provision hereof relating to claims of creditors may be waived by the Administrator of Veterans' Affairs when such waiver is shown to be for the sole benefit of an incompetent or minor beneficiary. Sections 4747, Revised Statutes; 308, World War Adjusted Compensation Act, and 22, World War Veterans' Act, are repealed, and all other acts inconsistent herewith are modified hereby."

Did you make that in your recommendation, General?

General Hines. I do not recall that. Would you let Mr. Odom explain what his views are on that? I do not recall that I brought that up.

The Chairman. It is right here on the last page, Mr. Odom.

General Hines. It will probably bring some question, I imagine, from creditors, will it not?

Mr. Edward E. Odom. May I address my remarks first to the sixth line in that section, and then come to the chairman's question, because I think it has a bearing on it?

The Chairman. Very well.

Mr. Odom. The suggestion that the Administrator made, I believe, read this way:

> "This provision shall not attach to any property purchased wholly or in part out of such payments, nor to claims of the United States arising under such laws."

The first clause of that suggested sentence was intended to bring this section into line with the decision of the

Supreme Court of the United States in the case of *Trotter* v. *Tennessee*; and, as applied to taxation, probably is correct if the intention of the Congress is that property purchased out of the insurance and compensation payments should not be exempt from taxation. The Supreme Court has held that under the present law it is not exempt; but there is a serious question whether—for example, if a veteran, as I think was suggested by Justice Cardozo, takes his compensation and buys a barrel of flour with it or a side of meat, that that should not be exempt, the same as the money itself; or, if he invests it in bonds, that the bonds should or should not, as might be decided by the Congress, be exempt from the claims of his creditors.

It was our understanding that this would not affect the present holding that these funds, no matter in what form they are invested, would be exempt from the claims of creditors. But there is a case pending in the Supreme Court of the State of North Carolina, and another one in the Kentucky Supreme Court, where the decision of the Supreme Court of the United States in the case of *Trotter* v. *Tennessee* is being argued as applicable to the claims of creditors; that is, that if the veteran puts his money in property, that it is no longer exempt from the claim of the creditor.

If that is the proper effect of this language, it occurs to us that the committee might desire to give some consideration to whether they would not change that so as to make it clear that it is only on the question of taxation that the property shall not be exempt.

In other words, it could be argued, I suppose well, that the veteran's property should be taxed the same as anybody else's. Now, whether his property should also be free from the claims of creditors when that property is purchased with these funds, is the question that ought to be considered by the committee at this time, I think.

Now, coming to the question of the chairman on this proviso, that the Administrator of Veterans' Affairs should have authority to waive the exemption when it seems to be for the benefit of the veteran or the beneficiary to do so: my theory, Mr. Chairman, may be wrong, but it is my theory that the Congress of the United States, under the Constitution, has authority to say what shall be the administrative duties and the administrative responsibilities and the admin-

istrative authority of any employee or officer of the United States Government. I question very seriously whether the Congress of the United States, on a matter that is within the powers reserved by the Constitution to the States, could enact legislation which would modify the laws of the States or the procedure of the courts on a question solely within the States' jurisdiction.

It is my thought, therefore, that, while this would give the Administrator of Veterans' Affairs authority not to insist upon the court granting the exemption—and I think he has that authority now without it being in the act—that it would not and could not, by virture of the constitutional provisions, give any authority, to the court to waive that exemption. In other words, if the court has authority to waive the exemption—I am speaking now of a court having general equity powers rather than a probate court having more limited statutory jurisdiction—that authority exists by virtue of such powers and not by virtue of a Federal act.

The Chairman. I think we can agree on it. What do you think about it, Mr. Pappenfort?

Mr. Pappenfort. A Federal statute could not, of course, give an administrative official the power to waive a State law. But this proviso merely gives the Administrator power to waive such claims as he may deem equitable, insofar as objecting to those claims in court is concerned. That is all. In other words, if the Director, under this power, waived a claim, and then the court, a State court, decided to allow it, of course, the decision of the State court would prevail.

Mr. Griswold. You cannot waive the defense to a claim.

Mr. Pappenfort. Yes.

The Chairman. Do you care to make a statement, Mr. Odom?

Mr. Edward E. Odom. With one reservation, Mr. Chairman; we feel that we have a duty to the guardian as well as to the ward, always keeping in mind that the ward's interests are paramount. We feel that we should not permit a guardian, particularly if that guardian is the mother or other near relative of the beneficiary, to be placed in a position where someone might come along later on and hold that guardian liable for some failure to act, which might be this very thing, to claim an exemption under the law.

The Chairman. Just a minute. You are getting into a fundamental question, as I view it. You say you d that to protect the guardian.

Mr. Odom. To a certain extent, keeping in mind always, Mr. Chairman, that the interest and welfare of the ward are paramount.

The Chairman. It is the idea, then, of the Bureau that the primary duty is the duty to the ward?

Mr. Odom. Always, without any reservation whatsoever; and if there is the slightest degree of difference of interest between the guardian and the ward, we absolutely take care of the ward's interests.

But that does not mean, Mr. Chairman, as I see it, that we can sit by and see the mother of a beneficiary, who happens to be the guardian of the beneficiary, or any other guardian—perhaps if it is a lawyer or a trust company we should not be so solicitous about them—fail to protect themselves by failing to claim the exemption.

The Chairman. All guardians have their own lawyers.

Mr. Odom. No, sir; we act as lawyers for a great many of them.

Mr. Griswold. You do not mean to say that you act for the beneficiary and act for the guardian, two diverse interests?

Mr. Odom. In cases which are so small that it is hardly possible for the guardian to employ an attorney to make up the accounts, we do, if the guardian requests it, make up those accounts for them and file them with the Court.

General Hines. May I say a word? In other words, many of these accounts are small and many of them, custodial awards, it would be a hardship on the guardian, for example, a mother who handles the matter. But Mr. Odom is going beyond what I understood from Mr. Pappenfort. In other words, we have the right to call the attention of the court to this matter, and if the court turns us down, which they have the jurisdiction to do, I think that settles it.

The Chairman. I think we have had enough testimony on that. It is not as important as other matters and I think we will proceed on other matters.

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PUBLIC LAWS OF NORTH CAROLINA
CHAPTER 262, SESSION 1933

(Michie's Code of North Carolina, Chapter 40-a, Section 2202 (13)).

Investment of funds—Every guardian shall invest the funds of the estate in any of the following securities:

(a) United States Government bonds.

(b) State of North Carolina bonds issued since the year one thousand eight hundred seventy-two.

(c) By loaning the same upon real estate securities in which the guardian has no interest, such loans not to exceed fifty per cent (50%) of the actual appraised or assessed value, whichever may be lower, and said loans when made to be evidenced by a note, or notes, or bond, or bonds, under seal of the borrower and secured by first mortgage or first deed of trust. Said guardian before making such investment on real estate mortgages shall secure a certificate of title from some reputable attorney certifying that the same is the first lien on real estate and also setting forth the tax valuation thereof for the current year: Provided, said guardian may purchase with said funds a home or farm for the sole use of said ward or his dependents upon petition and order of the clerk of the superior court, said order to be approved by the resident or presiding judge of the superior court, and provided further that copy of said petition shall be forwarded to said bureau before consideration thereof by said court.

It shall be the duty of guardians who shall have funds invested other than as provided for in this section to liquidate same within one year from the passage of this law: Provided, however, that upon the approval of the judge of the superior court, either residing in or presiding over the courts of the district, the clerk of the superior court may authorize the guardian to extend from time to time, the time for sale or collection of any such investments; that no extension shall be made to cover a period of more than one year from the time the extension is made.

The clerk of the superior court of any county in the state or any guardian who shall violate any of the provisions of this section shall be guilty of a misdemeanor, punishable by fine or imprisonment or both in the discretion of the court. (1929, c. 33, s. 14; 1933, c. 262, s. 2.)